

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 68 of 2004

in

OFFICIAL LIQUIDATOR REPORT No 40 of 2004

with

CIVIL APPLICATION No 130 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GANESH HOUSING CORPORATION. LTD.

Versus

O.L.OF STEEL TUBES LTD.

Appearance:

1. O.J.APPEAL No. 68 of 2004
MR AS VAKIL for Appellant No.
NOTICE SERVED BY DS for Respondent No. 1-2,4,6
MS NALINI S LODHA for Respondent No. 3,5
MR DHAVAL DAVE for MR SHIVANG J SHUKLA for Respondent No. 7
2. CIVIL APPLICATION No. 130 of 2004
MR AS VAKIL for Appellant No.

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 12/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

This appeal is directed against the judgment dated 30.9.2004/1.10.2004 of the learned Company Judge confirming the sale of lands of Gujarat Steel Tubes Ltd. (in liquidation) in favour of M/s. Spectra Enterprises Pvt. Ltd., Mumbai-respondent No.7 herein for a sum of Rs.42.10 Crores, out of which, respondent No.7 has already paid Rs.21.05 Crores being 50% of the sale price over and above the Earnest Money Deposit (EMD) of Rs.1.80 Crores.

2. The Gujarat Steel Tubes Ltd. (the Company in liquidation) was ordered to be wound up by order dated 27.12.2001 in Company Petition No.7 of 2001. By order dated 5.2.2003, the Sale Committee was constituted for disposal of its assets. By order dated 27.11.2003, the Company Court confirmed the sale of all the assets of the Company in liquidation except land, time keeper's office, compound wall, trees and records (i.e. plant and machinery and building structure) in favour of M/s. Ganesh Trading Company, New Delhi. Hence, only lands of the Company in liquidation remained to be disposed of.

3. As far as the lands are concerned -

3.1 The advertisement dated 26.8.2003 invited offers for the lands also in Lot No.I, while inviting offers for the other assets and properties of the Company in Lot No.II. As per the valuer's report of the registered valuer appointed by the Official Liquidator, the value of the lands was Rs.32.04 Crores for the lands admeasuring 8,13,325 sq.mtrs.. The highest offer received for the lands was from the present appellant at Rs.17.50 Crores. The Sale Committee found the offer on the lower side and decided to re-advertise the sale fixing the upset price for the lands at Rs.18 Crores. Accordingly, fresh advertisement was issued and published in "Economic Times" and "Gujarat Samachar" dated 23.6.2004 specifically mentioning that offers were invited for the

lands of M/s. Gujarat Steel Tubes Ltd. (in liquidation) situate at Kaligam, Sabarmati for the lands admeasuring approx. 8,13,325 sq.mtrs. with an upset price of Rs.18 Crores and EMD of Rs.1.80 Crores. The advertisement further stated, inter-alia, as under:-

"The sale of properties is on "AS IS WHERE IS AND WHATEVER THERE IS BASIS". The purchaser will be liable to pay all local duties and taxes. The offerors are requested to give their offers strictly as per the Terms and Conditions of sale, ... The offers will be opened in the presence of members of the sale committee on 14.7.2004 at 4.30 PM in the office of the Official Liquidator and thereafter auction/inter-se-bidding will be held at 5.00 PM on the same day, when the offerors are requested to remain present to raise/revise their offer upwards.

The properties put on sale can be inspected on 2.7.2004 between 11.00 AM & 5.00 PM."

3.2 In response to the said advertisement, the Sale Committee received 14 tenders including the tender of the present appellant along with the letter dated 14.7.2004 wherein the appellant, inter-alia, stated as under:-

"With reference to captioned subject and in continuation to the above reference, we change the purchase price of the above property in continuation of our earlier offer. The new purchase price of offer is Rs.18,18,00,000/- for the land approximately 8,13,325 sq.mtrs. as per your advertisement. We also increase the offer of purchase amount if necessary situation will happen in the meeting of auction/inter-se bidding held at 5.00 PM on the 14th July 2004 along with earnest money draft of 10% of our offer amount."

The Sale Committee opened the tenders and found that the higher offer was made by RJD Impex Pvt. Ltd. for 19.01 Crores. Some of the bidders sought clarifications and the Official Liquidator clarified the issues including the period during which 50% of the offer price was to be paid. It was also clarified as to when the balance of the amount was to be made and possession of the land was to be given subject to confirmation by this Court. Thereafter, the Sale Committee commenced the auction proceedings and at the inter-se bidding the appellant's offer went upto Rs.37 Crores, but the highest

offer was made by M/s. Deepak Impex Pvt. Ltd. at Rs.39.50 Crores and accordingly, the Sale Committee recommended confirmation of sale in favour of the said party.

3.3 After the aforesaid auction was held on 14.7.2004, the Official Liquidator received the communication on 2.8.2004 from respondent No.7 herein accompanied by two demand drafts for EMD of Rs.1.80 Crores of the said party stating that it was ready to offer higher price in comparison to others and requested for permission to participate in the bidding process. The Official Liquidator submitted OL Report No.40 of 2004 pointing out the aforesaid developments and seeking orders of the Court.

This Court issued notice on the above report on 3.9.2004 and directed the Official Liquidator to inform the offerers and intending purchasers for inter-se bidding on 30.9.2004.

3.4 On 30.9.2004, before the bidding commenced, it was made clear to the parties that those who had not approached the Sale Committee within the stipulated period were required to bear interest or late entry charge of 1.5% per month on the earnest money amount. Both the appellant (which had earlier withdrawn its EMD after the auction was held by the Sale Committee on 14.7.2004) and respondent No.7 herein agreed to pay late entry charges. As recorded in the judgment under appeal, the bidding process commenced amongst following five parties:-

- (i) M/s. Depak Impex Pvt. Ltd.
- (ii) M/s. Maurya Organisers Pvt. Ltd.
- (iii) M/s. B2B (India) Pvt. Ltd.
- (iv) M/s. Spectra Enterprises Pvt. Ltd.
(respondent No.7 herein).
- (v) M/s. Ganesh Housing Corporation Ltd.
(appellant herein).

Considering the price offered by M/s. Deepak Impex Pvt. Ltd. before the Sale Committee on 14.7.2004 - Rs.39.50 Crores, that was made the starting point for bidding and ultimately when the last bid of Rs.41.70 Crores was made by the representative of respondent No.7

herein, M/s. Maurya Organisers Pvt. Ltd. withdrew from the bidding process. The learned counsel for the present appellant as well as the learned counsel for M/s.B2B (India) Pvt. Ltd. contended that the area of the land was actually less than the area advertised and, therefore, it was necessary that fresh measurement should be obtained. M/s. Deepak Impex Pvt. Ltd. and respondent No.7 herein objected to the above submissions made on behalf of the other three parties and submitted that in view of Condition No.13 of the Terms and Conditions to the effect that the sale is on AS IS WHERE IS AND WHATEVER THERE IS BASIS, there was no need to stay the auction process which had already commenced. As the Court time was over on 30.9.2004, the matter was kept on the next date i.e. on 1.10.2004 in the second session.

3.5 On 1.10.2004, respondent No.7 made the highest unconditional offer of Rs.42.10 Crores, whereas on behalf of M/s. Maurya Organisers Pvt. Ltd. and the present appellant conditional offers were made of Rs.44 Crores and Rs.44.10 Crores respectively, subject to the condition that the area of the land was 8,13,325 sq.mtrs.. The learned Company Judge rejected the above offers as conditional. Condition Nos. 13 and 26 of the Terms and Conditions, read as under:-

"13. The purchaser shall accept the tenure of the land area as they actually exist on the date of confirmation of sale and the vendor shall not be bound to compensate him in respect of difference in the tenure or in the area or to incur the costs of ascertaining the correct area or tenure thereof or such other expenses in connection therewith.

26. The sale will be strictly on these terms & conditions and any conditional offer will not be entertained."

The learned Company Judge made the following observations in the judgment:-

"When the entire sequence of events is taken into consideration .. the Court has definitely gathered an impression and is of the opinion that there is a definite design and purpose to delay/derail the proceedings for the reasons best known to such parties. Apparently, it appears that there is a caucus operating and the intention seems to be to drive out genuine participants and

ensure that ultimately the land in question is available at a throw away price."

As respondent No.7 emerged as the successful bidder having offered a price of Rs.42.10 Crores for the land in question, the learned Company Judge confirmed the sale in favour of respondent No.7, subject to various conditions, some of which are as under:-

- "(i) the sale is on "AS IS WHERE IS AND WHATEVER THERE IS BASIS";
- (ii) The purchaser shall pay 50% of the sale price within 30 days from today;
- (iii) The balance of sale price, after adjusting the EMD, shall be paid within one year thereafter. It will be open to the purchaser to make payment at any time within the year and upon payment of the full consideration the successful bidder would be entitled to possession of the properties after execution of the Sale Deed in favour of the successful bidder."

It is the aforesaid judgment and order of the learned Company Judge which is challenged in this appeal.

4. Mr AS Vakil, learned counsel for the appellant has made the following submissions:-

- (i) There was a serious dispute about the area of the land offered for sale and the appellant as well as three other bidders had made a legitimate request to get the lands of the Company offered for sale measured. According to the appellant, the area of the land was less than the area mentioned in the advertisement at 8,13,325 sq.mtrs.. Since the area of the land was apprehended to be much less than the area mentioned in the advertisement, the appellant was justified in requesting for measurement and in making the conditional offer of Rs.44.10 Crores if the area of the land was as mentioned in the advertisement.

In support of the contention that the land offered for sale was actually less than that mentioned in the advertisement -

- (a) Reliance is placed on a document which is

at page 89 of the paper book. Reliance is also placed on affidavits filed on behalf of the appellant and the other bidders on 1.10.2004 taking the stand that the area of the land offered for sale was less than the area mentioned in the advertisement;

(b) Mr Vakil also submitted that even the registered valuer appointed by the Official Liquidator had not actually measured the lands which were subject matter of the valuation report and the advertisement, but the said valuer had only relied on the measurements as recorded in the village Form No.7/12 as mentioned in the report of the valuer and, therefore, also the appellant and other bidders were justified in requesting for actual measurements of the land in question.

(ii) While the advertisement had offered for sale the land of the Company at Kaligam only, the learned Company Judge has, while confirming the sale in favour of respondent No.7, provided for sale of the lands of the Company at Kaligam as well as at Chenpur;

5. In reply, Mr Percy Kavina, learned counsel for the Official Liquidator has made the following submissions:-

5.1 The area of the land as mentioned in the advertisement is the correct measurement and the issue had already been concluded by order dated 13.8.2004 passed by the learned Company Judge in Company Application No.259 of 2004;

5.2 There was no discrepancy in any of the advertisements issued by the Official Liquidator as Chairman of the Sale Committee for inviting offers. Both, in the advertisement published in the Gujarat Samachar dated 23.6.2004 as well as the advertisement published in Economic Times dated 23.6.2004 the area of land mentioned was 8,13,325 sq.mtrs.;

5.3 Reference is also made to the valuation report of registered valuer Mr Mukesh Shah wherein following measurements of the land of the Company are given:-

Total Land: Kaligam - 6,43,760 sq.mtrs.

Chenpur - 1,69,656 sq.mtrs.

Total - 8,13,325 sq.mtrs.

5.4 In response to the advertisement dated 23.6.2004, the appellant had specifically made his offer dated 14.7.2004 for 8,13,325 sq.mtrs. and at the auction before the Sale Committee on 14.7.2004, the appellant had initially quoted Rs.27 Crores and then went upto Rs.37 Crores and then collected back its EMD demand draft. Thereafter, at the auction conducted before the Court on 30.9.2004, with EMD draft the appellant accepted the condition as to late entry charge and participated in the auction and quoted its highest price at Rs.41.60 Crores, (as transpires from the auctionsheet dated 30.9.2004 on the record). It was when respondent No.7 made the highest offer of Rs.41.70 Crores on 30.9.2004 that the appellant and another party raised the dispute about measurement of the land. Hence, the dispute raised by the appellant was not bonafide.

5.5 Reference to document at page 89 of the paper book is misconceived, as already explained by the Official Liquidator in the report submitted before the Court on 21.12.2004.

5.6 In any view of the matter, it has been the case of the appellant and the three other parties supporting the appellant that the area of the land of the Company in liquidation was much less than the area mentioned in the advertisement. Hence, getting the land measured or re-measured would not serve any purpose except to justify reduction in the price which could never be in the interest of the Company in liquidation, when the offers were invited with the specific condition that the property is offered for sale on AS IS WHERE IS AND WHATEVER THERE IS BASIS, and subject to the further condition that the purchaser shall not be entitled to compensation on the ground of difference in the area.

5.7 In case the sale confirmed by the learned Company Judge is set aside for any reason and the property is put up for sale again by issuing fresh advertisement, there are all chances of the Company in liquidation not getting even the sale price presently offered by respondent No.7. The appellant is interested in getting the present sale set aside so that in the next round of sale, the property can be purchased for a much lower price.

6. Ms Nalini Lodha, learned counsel appearing for two of the secured creditors being Bank of Baroda and Indian Overseas Bank has supported the judgment of the learned Company Judge.

As far as the workers are concerned, Mr Medipelly appearing for one of the workers' Unions and for Mr Mukul Sinha for the other Union states that both the workers' Unions support the judgment of the learned Company Judge.

Both Ms. Lodha and Mr Medipelly have submitted that the amounts deposited by respondent No.7 so far and to be deposited hereafter towards sale consideration should be disbursed with utmost expedition to secured creditors and the workers.

7. Mr Dhaval Dave for respondent No.7 in whose favour the sale is confirmed by the learned Company Judge, has also obviously supported the judgment under appeal.

8. Having heard the learned counsel for the parties, we do not find any substance in the submissions made on behalf of the appellant that the sale confirmed by the learned Company Judge in favour of respondent No.7 deserves to be set aside.

9. In the first place, the advertisements published in Economic Times and Gujarat Samachar dated 23.6.2004 clearly mentioned that the lands of the Company in liquidation situate at Kaligam admeasuring approximately 8,13,325 sq.mtrs. was put up for sale on AS IS WHERE IS AND WHATEVER THERE IS BASIS and it was also mentioned in the advertisement that the properties put up for sale can be inspected on 2.7.2004 during office hours. Condition No.13 of the Terms and Conditions also provided that the purchaser shall not be entitled to any compensation for any difference in the area of the land or its tenure. It was in response to the said advertisement and terms and conditions that the appellant herein made its offer dated 14.7.2004 specifically mentioning that it was making the offer of Rs.18.18 Crores for "the land approximately 8,13,325 sq.mtrs. as per your advertisement". The offer-sheet accompanying the said letter also specifically mentioned that the offer was for purchase of "land admeasuring approximately 8,13,325 sq.mtrs. situate at the above address". The minutes of the meeting of the Sale Committee held on 14.7.2004 after opening the tenders indicate that certain queries were raised by the bidders but none of those queries pertained to the area or location of the land put up for sale. The

very fact that the appellant itself raised its offer from Rs.18.18 Crores as mentioned in the offer-sheet upto Rs.37 Crores before the Sale Committee on the same date (14.7.2004) without making any condition or without raising any doubt about the area or location of the land, is sufficient to show that the appellant had not entertained any doubt or raised any dispute about the area or location of the land in question at any stage till 30.9.2004. Even at the auction conducted before the Court on 30.9.2004, the appellant participated after giving the demand draft of Rs.1.80 Crores and even accepted the condition as to late entry charge and participated at the auction and offered the maximum price of Rs.41.60 Crores without stipulating any condition or raising any controversy about the area of the land. It was when the highest offer of the day was made by respondent No.7 at Rs.41.70 Crores that the appellant and another Company in chorus raised the dispute about the area of the land.

10. Now, reference may be made to page 89 of the paper book on which the learned counsel for the appellant has placed heavy reliance. The said document reads like a notice inviting offer for sale of the land of the Company in liquidation being land admeasuring approximately 6,42,513 sq.mtrs. with upset price of Rs.18 Crores. It is not the case of the appellant that the said document was ever published in any newspaper.

The Official Liquidator has given explanation in his report submitted in the present appeal. The explanation is that it was an inchoate document; the OL's staff had prepared an internal report indicating measurement of the land at 6,42,513 sq.mtrs. on the basis of the measurements which the appellant had indicated in its earlier letter dated 31.5.2004 before the second advertisement was published on 23.6.2004. The OL has further explained that the mistake had occurred because the land falls within the sim of two villages, namely, Kaligam and Chenpur and by inadvertence the land of Chenpur village was not included in the draft advertisement put up by OL staff and that the correct figure is what was advertised and sold and confirmed by the learned Company Judge.

11. We are of the view that the explanation is required to be accepted. As already indicated earlier and mentioned in the valuer's report dated 19.5.2003, the lands of the Company in liquidation are in two villages Kaligam and Chenpur with the following areas:-

Total Land: Kaligam - 6,43,760 sq.mtrs.

Chenpur - 1,69,656 sq.mtrs.

Total - 8,13,325 sq.mtrs.

It is, therefore, clear that the draft document at page 89 did not include the land in village Chenpur. In any case, since the document at page 89 was never published as a tender notice nor was it ever supplied to any of the bidders after issuance of the advertisement and before the auction was conducted before this Court, there was no question of any misrepresentation having been made to any party, much less to the appellant.

12. The learned Company Judge has also given the finding that the other bidders had also not raised any objections about the area of the land till respondent No.7 made the highest offer of Rs.41.70 Crores on 30.9.2004. In fact, the doubt about the area of the land was already raised in Company Application No.259 of 2004, which came to be rejected by the learned Company Judge on 13.8.2004 recording the statement of the Official Liquidator that the area of the land was as stated in the advertisement.

13. Mr Vakil has further submitted that apart from the dispute about the area of the land, the advertisement published in the newspapers dated 23.6.2004 had offered for sale only the land in village Kaligam and not in the village Chenpur and, therefore, also the appellant and the other bidders were misled.

We find that the advertisement as published in "Economic Times" and "Gujarat Samachar" on 23.6.2004 invited offers for sale of land in the matter of M/s. Gujarat Steel Tubes Ltd. (in liquidation) situate at Kaligam, Sabarmati, Ahmedabad with the following description:-

"Land Admeasuring approximately 8,13,325 Sq.Mtrs."

There is no dispute about the fact that the factory of the Company in liquidation is situate at Kaligam in Sabarmati Municipal Area, where the Company in liquidation has almost 70% of its land and only remaining about 30% land is in the adjoining village Chenpur. The advertisement does not hold out that the land is situate at Kaligam. It is the Company in liquidation which is situate at Kaligam. The Terms & Conditions of the offer

also begin with the following title:-

"IN THE MATTER OF M/S. GUJARAT STEEL TUBES LTD.
(IN LIQN.) SITUATED AT Kaligam, Sabarmati,
Ahmedabad."

In view of the above, it is not possible to accept the appellant's contention that the OL had offered for sale the Company's land only in village Kaligam and not in village Chenpur. Admittedly, the Company in liquidation does not have entire land admeasuring 8,13,325 sq.mtrs in village Kaligam. The land in village Kaligam admeasures only 6,43,760 sq.mtrs. It is only when the Company's lands in both the villages are taken together that they admeasure approximately 8,13,325 sq.mtrs. Hence, absence of reference to village Chenpur in the advertisement dated 23.6.2004 did not result into any irregularity in the sale as alleged by the appellant.

14. Mr Vakil has also contended that the registered valuer had not measured the lands but had merely relied upon the measurements recorded in the revenue records. Mr Vakil has further submitted that it is necessary to take actual measurements, because the condition that the property is sold on AS IS WHERE IS AND WHATEVER THERE IS BASIS would justify variation of only about 5% in actual measurement of the land and would not justify reduction of the land from 8 lakh sq.mtrs. to 4 or 5 lakh sq.mtrs.. Strong reliance is placed on the decision dated 12.7.2004 of a learned Single Judge in Company Application No.21 of 2004.

15. In the first place, the land offered by the Company in liquidation for sale as stated in the advertisement is 8,13,325 sq.mtrs.. Respondent No.7 in whose favour the sale is confirmed is not making any grievance about the area being less and in any case we record the statement being made by Mr Dhaval Dave for respondent No.7 that respondent No.7 does not raise dispute about the area of the land offered for sale as per the advertisement and for which sale is confirmed by the learned Company Judge in favour of respondent No.7. Mr Dhaval Dave further states that respondent No.7 will not claim any rebate even if the the area of the land is found to be less or even if there is any change of tenure.

16. As regards reliance placed by the learned counsel for the appellant on the decision dated 12.7.2004 in Company Application No.21 of 2004, that was a case where the purchaser at a public auction made a grievance that

the land actually made available to the purchaser was less than the land which was advertised for sale and the defence of the seller was that the property was put up for sale on AS IS WHERE IS BASIS. The Court held that since the area of the land put up for sale was specifically mentioned, only marginal shortfall would be permissible and not substantial shortfall. However, apart from the fact that the said judgment at the most could be invoked by the purchaser and in the present case, Mr Dhaval Dave for the purchaser has already made a statement as indicated above and in view of the order that we propose to pass there is no basis to entertain the apprehension sought to be raised by Mr Vakil for the appellant that the purchaser would be able to claim a rebate if the area of the land sold is subsequently found to be less than the area advertised.

17. As regards the contention that if the area of the land is found to be less, then fresh advertisement should be issued, the submission is premature because we have not found any justification for requiring the Official Liquidator to make any measurement of the land at this stage more particularly when it is the case of the appellant that the area of the land is substantially less than offered for sale in the advertisement and respondent No.7 is prepared to accept the land offered for sale irrespective of the actual measurements at the site. If at all the area is found to be less than that mentioned in the advertisement, normal and logical consequence would be that the Company in liquidation will get less price if the property is again put up for sale. Apart from that risk, if the sale of the land for Rs.42.10 Crores as confirmed by the learned Company Judge is set aside, obviously respondent No.7 would have to be refunded 50% amount plus EMD aggregating to Rs.22.85 Crores which are lying deposited with the Official Liquidator for the last three months and for ought one knows, even much less price than Rs.40 Crores may be realised in the next round of auction, which is bound to be to the detriment of the secured creditors and the workers for whose benefit the assets of the Company in liquidation are being sold.

The learned counsel for the secured creditors as well as the learned counsel for the workers' union have supported the judgment of the learned Company Judge and have submitted that the sale as confirmed by the learned Company Judge should be permitted to go through so that they can get their dues at the earliest.

We find considerable substance in the submission

of the learned counsel for the secured creditors and the learned counsel for the workers' union and do not find any substance in the submissions made on behalf of the appellant.

18. Mr Vakil, learned counsel for the appellant has relied upon the following judgments:-

- (i) 1970 (40) CC 936 (SC) Navalkha and Sons vs.
Ramanuja Das and others.
- (ii) 1999 (96) CC 804 (SC) Allahabad Bank vs. Bengal
Paper Mills Co. Ltd.
- (iii) 1998 (91) CC 734 (Orissa) Kedar Rout vs. Sricharan
Das
- (iv) 1996 (85) CC 788 (SC) LICA (P) Ltd. No.1 vs.
Official Liquidator
- (v) 1996 (85) CC 792 (SC) LICA (P) Ltd. No.2 vs.
Official Liquidator
- (vi) 1996 (85) CC 796 (Delhi) Jainsons Export India vs.
Binatone Electronics Ltd.
& Ors.
- (vii) 1996 (85) CC 802 (Delhi) Jainsons Export India vs.
Binatone Electronics Ltd.
& Anr.
- (viii) 1961 (21) CC 737 (Mysore) Premier Insurance Co.
Ltd. vs. Davanagere
Cotton Mills Ltd.
- (ix) 1995 (83) CC 687 (Kant.) Syndicate Bank vs. Field
Star Cycle Industries P
Ltd. & Anr.
- (x) AIR 2000 SC 2346 Divya Manufacturing Co.
(P) Ltd. vs. Union of
India
- (xi) AIR 1995 Delhi 316 M/s. Kaleidoscope (India)
P. Ltd. vs. Phoolan Devi
- (xii) AIR 1971 SC 385 Adi Pherozshah vs. HM
Seervai

Since all the judgments lay down the well settled

principle that at a public auction attempt must be made to realize the highest price, it is not necessary to refer to all those judgments. In the facts of the instant case, as already indicated above, the property for which the appellant had earlier offered only Rs.17.50 Crores in May 2004 and for which the appellant had offered Rs.37 Crores before the Sale Committee on 14.7.2004 is now fetching Rs.42.10 Crores as per the unconditional offer of respondent No.7 who has already deposited 50% price and 10% EMD aggregating to Rs.22.85 Crores. What the appellant is now submitting, after having withdrawn the EMD of Rs.1.80 Crores and having no stake whatsoever, is conditional offer of Rs.44 Crores subject to certain conditions. As already discussed earlier, the condition is not only contrary to the Terms and Conditions of the tender notice (condition Nos. 13 and 26 as set out in para 3.5 of this judgment) but is also certainly not bona fide, even if not mala fide as found by the learned Company Judge. This becomes evident when we look at the area of the lands in question as per the appellant's case and the case of the other bidders who supported the appellant at the hearing before the learned Company Judge. Mr Vakil had invited our attention to the figures indicated by the other bidders in their affidavits filed before the learned Company Judge. The figures are as under :-

Name of the Bidder Area of the land

Maurya Organizers Pvt.Ltd. 4,41,670.20 Sq.Mtrs
(Affidavit dated 30.9.04 -
para 4 - Page No. 110
and dated 1.10.2004 -
para 3 - Page No. 139)

B2B India Pvt. Ltd. 4,50,000 Sq.Mtrs.
(Affidavit dated 1.10.04 -
para 7 - Page No. 131)

Ganesh Housing Corpn. Ltd. 6,42,513 Sq.Mtrs.
(appellant)
(Page Nos. 16 & 159)

All that the appellant now wants the Court is to require the Official Liquidator to undertake the exercise of measuring the lands only for the purpose of showing less area of the land sold to respondent No.7 which respondent No.7 has agreed to purchase without any demur about the area or tenure of the land. As found by the

learned Company Judge and confirmed by us, the appellant had participated in the auction without any dispute or reservation about the area of the land and the dispute about the area of the land was raised by the appellant only after respondent No.7 made the offer of Rs.41.70 Crores on 30.9.2004. Hence, the appellant's offer cannot be said to be bonafide.

19. We may also refer at this stage to the affidavit dated 26.11.2004 on behalf of respondent No.7 wherein it is submitted, without prejudice to the other submissions, that since the appellant has no stakes, the ad-interim stay does not hurt the appellant but it hurts respondent No.7 who has already deposited Rs.22.85 Crores; hence, the appellant's bonafides may be tested by requiring him to deposit the said amount.

We find that the appellant has never offered to deposit such amount to show its bonafides, nor has it offered to pay more than Rs.42.10 Crores (the unconditional offer of respondent No.7 and accepted by the learned Company Judge) for the lands of the Company in liquidation irrespective of the measurements.

20. No other contentions are urged.

21. The appeal being devoid of merit deserves to be dismissed summarily and is accordingly dismissed, subject to the condition that respondent No.7 shall not claim any amount by way of rebate or otherwise or any part of the sale consideration on the ground that the area of the land is actually less than the land offered for sale as per the advertisement or on the ground of difference in the nature of tenure of the land.

The ex-parte ad-interim order dated 2.11.2004 requiring the parties to maintain status-quo is hereby vacated.

22. The appeal is summarily dismissed with costs quantified at Rs.10,000/- (Rupees ten thousand) to be paid to each of the parties appearing before us i.e. Rs.10,000/- to the Official Liquidator, Rs.10,000/- to Indian Overseas Bank, Rs.10,000/- to Bank of Baroda, Rs.10,000/- to the Gujarat Steel Tube Employees Union and Rs.10,000/- to respondent No.7. The aforesaid amounts of costs shall be paid by the appellant to the respective parties by account payee cheques within one month from today.

23. At this stage, the learned counsel for the

appellant prays that the operation of this judgment may be stayed in order to enable the appellant to have further recourse in accordance with law.

24. When we have found that there is no substance in the appeal, that the sale price offered by respondent No.7 and ordered to be accepted by the learned Company Judge is substantially higher than the price assessed by the registered valuer and that the course suggested by the appellant in the present proceedings is only likely to fetch lesser price for the land in question for which respondent No.7 has already offered to pay Rs.42.10 Crores and has in fact paid Rs.22.85 Crores, we do not see any justification to continue the ex-parte ad-interim stay granted earlier or to stay the operation of this judgment.

25. As the appeal is dismissed, the civil application does not survive and is accordingly dismissed.

(M.S. SHAH, J.)

(D.H. WAGHELA, J.)

zgs/-